ance business is considered of such importance that a State may regulate or restrict the formation of contracts of insurance within its borders;[30] and there is authority for the proposition that fire insurance is a business affected by a public interest.[31] But until the decision in our leading case no court had gone so far as to permit rate fixing. Indeed, a recent decision in a federal court held a statute passed by the legislature of Nebraska fixing the maximum charges and rates of premium to be charged by all surety companies operating in that State, to be void because repugnant to the Fourteenth Amendment to the Constitution.[32]

It is clear from the foregoing review of the decisions that the Supreme Court has gone considerably further than ever before in holding that the business of insurance is so much affected by a public interest as to justify a State, in the exercise of its police power, in regulating the rates or premiums which shall be charged for insurance. As to the wisdom and justification for such holding we will quote from an opinion of the Supreme Court in an earlier opinion: "Though reasonable doubts may exist as to the power of the legislature to pass a law or as to whether a law is calculated to promote the health, safety or comfort of the people, or to secure good order," —[in other words, whether it is within the legitimate exercise of the police power]—"we must resolve them in favor of that department of the government. . . . The question in each case is whether the legislature has adopted the statute in the exercise of a reasonable discretion, or whether its action is a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class".[33]

R. M. G.

CRIMINAL PROCEDURE—EXTRADITION—SUFFICIENCY OF PAPERS —The melodramatic escape of Harry K. Thaw from Matteawan, N. Y., where he was confined as an insane person, in accordance with a decree of custody following a verdict of "not guilty of murder but insane," and his subsequent capture in New Hampshire have produced a new situation in interstate extradition proceedings. When the State of New York claimed the right of extradition, under the Constitution[1] of the United States, the governor of New

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[30] Equitable Life Assur. Soc. v. Clements, 140 U. S. 226 (1891); Hooper v. California, 155 U. S. 648 (1895); Com. v. Vrooman, 164 Pa. 306 (1894).

[31] No. Amer. Ins. Co. v. Yates, 214 Ill. 272 (1905); State v. Fireman's Ins. Co., 74 N. J. Eq. 372 (1908); People v. Loew, 44 N. Y. Supp. 42; Com. v. Vrooman, 164 Pa. 306 (1894).

[32] Amer. Surety Co. v. Shallenberger, 183 Fed. Rep. 636 (1910).

[33] Brown, J., in Holden v. Hardy, 169 U. S. 391 (1898).

[1] Art. IV, Sec. 2: "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

Hampshire decided in favor of the sufficiency of the requisition papers, which set forth the flight and an indictment which, referring to the character of the custody under which Thaw had been held and reciting the details of the escape, charged a "conspiracy to prevent and obstruct justice and the due administration of law." Thereupon, Thaw brought a petition for a writ of *habeas corpus* in order to prevent extradition.

It is intimated in the opinion[2] of Judge Aldrich, who granted the writ, that the indictment was insufficient in substance for the reason that "neither the place of the alleged conspiracy, nor the means or manner of developing the escape, nor the knowledge or intention of obstructing justice and the due administration of law, are with particularity, if at all, set out."[3] However, the court's decision is not based "upon the techinal analysis of the question of crime in such a situation" but it flatly holds that extradition could not be obtained for the reasons, first, that the flight was not from the crime charged in the indictment, but, from the custody in Matteawan; secondly, that the requisition papers "upon their face negative the idea of personal criminal responsibility." "Every person is presumed to be sane until the contrary appears, but papers which, in the description of the person and of an alleged crime involved in an escape from control because of a finding of insanity and criminal irresponsibility, do not embrace the constitutional elements, and are not operative because insanity and criminal irresponsibility being proved are presumed to continue until the contrary appears."[4] The principal reason for these views as given by the court is that the arbitrary power of extradition should not be extended beyond the "field of strict crime" so as to apply to "indifferent and uncertain situations in respect to which the executive is not in a position to investigate the merits."

The case is contrary to the weight of authority in so far as the element of flight from the particular crime charged is required. As a general rule, it is sufficient if the accused was within the jurisdiction of the demanding State at the time of the commission of the crime and has subsequently been found in another State,[5] even though the latter be his domicile.[6] It is not necessary that the prose-

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The Act of Congress of Feb. 12, 1793, 1 Stat. 302, provided a uniform method of carrying out this provision. The first and second sections of this act have been re-enacted in §§5278 and 5279 of the revised statutes; U. S. Comp. Stat. 1901, p. 359.

[2] *Ex Parte* Thaw, 214 Fed. Rep. 424 (1914).

[3] *Ibid.*, p. 437.

[4] *Ibid.*, p. 430.

[5] Roberts v. Reilly, 116 U. S. 80 (1885); State v. Richter, 37 Minn. 436 (1887); Com. v. Hare, 36 Pa. Super. Ct. 125 (1907); Taylor v. Wise, 126 N. W. Rep. 1126 (Ia. 1910); Bishop, "New Criminal Procedure," p. 160; Bailey, Habeas Corpus, p. 525.

[6] Kingsbury's Case, 106 Mass. 223 (1870); *In re* Sultan, 115 N. C. 57 (1894).

cution have begun before the flight or that there be an intent to elude justice.[7] The belief of the accused that he had committed no crime is immaterial.[8]

Although in the principal case, the court took into consideration that extradition was sought nominally to punish for the conspiracy, but actually for the purpose of recommitment to Matteawan, it is usually held that the motive of the State demanding extradition is irrelevant;[9] and that any ulterior purpose behind the prosecution will not be inquired into.[10] Evidence that the indictment was procured improperly is incompetent.[11] The question whether or not there will be a fair trial in the demanding State will not be considered.[12] It is well settled that courts of the asylum State cannot inquire into the merits of the crime charged.[13] Thus, the innocence or probable guilt of the accused will not be investigated, but will be left for the determination of the tribunals of the State where the crime is alleged to have been committed.[14] Under this rule, evidence of the insanity of the accused is not admissible in extradition proceedings.[15]

Although there are no cases holding precisely that an indictment, on its face showing that the person indicted is insane, is insufficient as a basis for extradition, the decision in the principal case may be supported upon analogy to the numerous cases[16] which have laid down the general rule that an indictment must substantially charge the commission of an offense under the laws of the demand-

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[7] People v. Pinkerton, 17 Hun 199 (N. Y. 1879); *Ex Parte* Brown, 28 Fed. Rep. 653 (1886); *contra:* Degant v. Michael, 2 Ind. 396 (1850), which holds, as in the principal case, that the accused must have left for the sole purpose of escaping punishment for the crime charged.

[8] Appleyard v. Mass., 203 U. S. 222 (1906). In some jurisdictions, the question whether the accused is a fugitive from justice is one of fact to be decided by the governor of the state from which extradition is sought, and his decision thereon is not reviewable. Dennison v. Christian, 72 Neb. 703 (1904); affirmed, 196 U. S. 637 (1905). In other jurisdictions, his decision is merely *prima facie* evidence and may be reviewed by *habeas corpus* proceedings. *In re* Mohr, 73 Ala. 503 (1883); Farrell v. Hawley, 78 Conn. 150 (1905).

[9] Com. v. Superintendent of Co. Prison, 220 Pa. 401 (1908); *In re* Bloch, 87 Fed. Rep. 981 (1898).

[10] *Ex Parte* Denning, 50 Tex. Crim. 629 (1907).

[11] U. S. v. McClay, 4 Cent. L. J. 255 (1877).

[12] Marbles v. Creecy, 215 U. S. 63 (1909).

[13] People v. Hyatt, 172 N. Y. 176 (1902); *Re* Greenough, 31 Vt. 279 (1858).

[14] People v. Donohue, 84 N. Y. 438 (1881).

[15] Charlton v. Kelly, 229 U. S. 447 (1913). In this case, the question was not presented upon the face of the indictment.

[16] Pierce v. Creecy, 210 U. S. 387 (1908); Barriere v. State, 142 Ala. 72 (1904); *In re* Voorhees, 32 N. J. L. 141 (1867); Armstrong v. Van de Vanter, 21 Wash. 682 (1899). The fact that an indictment has been found is *prima facie* evidence that the statements therein are sufficient to constitute a crime in the demanding state. *In re* Renshaw, 18 S. D. 32 (1904).

ing State; that is, the essential elements constituting a crime must be stated. However, indictments will not be held insufficient merely because they are faulty in form.[17] But courts go far in holding what amounts only to matters of form. Thus, an indictment averring merely that the defendant had sold "intoxicating liquors contrary to the laws of the State" has been held sufficient.[18] An averment of larceny from a company without stating that it was a corporation capable of ownership of the property stolen was held to be only formally defective.[19] Extradition was granted upon an indictment setting forth facts indicating that embezzlement had been committed, and concluding "so" the defendant "did steal, take and carry away."[20]

Notwithstanding that the majority of jurisdictions will inquire into the substantial as opposed to the formal sufficiency of an indictment, there are some authorities[21] which take the view,—which it is submitted is the better one,—that the fact that an indictment has been found is enough to justify extradition, and that its sufficiency should be left for the decision of the courts of the demanding State, as are questions of guilt, motive and other matters which have been previously enumerated. It is suggested that the full faith and credit clause[22] of the United States Constitution should apply when an indictment found by one State is before the courts of another State. Also, it is submitted that the cases, holding that no constitutional right has been violated where a person charged with crime has been forcibly abducted from the asylum State to the demanding State without proper extradition proceedings,[23] are an indication that the purpose of the latter is chiefly to ascertain the authenticity of the requisition papers and the identity of the person charged therein.

An appeal from the decision of the principal case has been taken to the United States Supreme Court. Should that court affirm the judgment, the question will of course be presented as to what

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[17] Munsey v. Clough, 196 U. S. 364 (1905), where a single indictment set forth three distinct offences.

[18] Brown's Case, 112 Mass. 409 (1873).

[19] Roberts v. Reilly, *supra*, note 5.

[20] *Ex parte* Sheldon, 34 Ohio 319 (1878).

[21] Matter of Briscoe, 51 How. Pr. 422 (N. Y. 1876); Horner v. U. S., 143 U. S. 570 (1892), in which case, the petitioner was charged with sending circulars by mail concerning lotteries, and the court refused to determine, in *habeas corpus* proceedings, whether the scheme was a lottery but held that the question was properly triable in demanding state. Hawley, "Interstate Extradition," p. 34; Pearce v. Texas, 155 U. S. 311 (1894); People v. Police Commissioners, 91 N. Y. Supp. 760 (1905), where the court stated that a tribunal of an asylum state would not be justified in holding an indictment so faulty as to charge no offence, unless, in an extreme case, no other rational conclusion could be reached.

[22] Art. IV, Sec. 1.

[23] *In re* Moore, 75 Fed. Rep. 821 (1896); Pettibone v. Nichols, 203 U. S. 192 (1906).

remedy may be had under the circumstances of the case. Judge Aldrich suggests that the right of guardianship control, existing in the State, under the doctrine of *parens patriae,* should operate extraterritorially under the rules of comity applying to the ordinary cases of guardian and ward, so that if the return were sought of "a person who had escaped from custody based upon insanity or dangerous mental condition at the time of the commitment, and if at the time his recovery is sought, his mental condition was an open one under the decisions of the State creating the guardianship, and the right of control being based solely upon mental condition, that question and others . . . would be a proper subject of inquiry in a proper proceeding[24] raising the question of the right of the guardian to continue his control."[25] The necessity of legislation upon the subject has been recognized in Massachusetts where a statute[26] providing for interstate rendition of those who have escaped from custody as insane persons in a State and have fled to Massachusetts.

A. L. L.

INTERSTATE COMMERCE—STATE REGULATION—FERRIES—The difficulties attending any exact division of power where the State and federal governments have concurrent jurisdiction are nowhere more apparent than in the cases involving the State control of interstate commerce. The extent of the power of the States to authorize and regulate interstate ferries raises a phase of this problem. The power to regulate ferries over waters entirely within their limits is one that may be exercised exclusively by the States,[1] but whether a State may regulate ferries over waters separating two States was a debatable question until a recent decision by the Supreme Court of the United States in *Port Richmond and Bergen Point Ferry Company* v. *Board of Freeholders.*[2] A New Jersey statute of 1799 empowers the boards of chosen freeholders to fix the rates to be taken at ferry stations within their respective counties. The board of Hudson County fixed the rates to be taken by ferries plying between that county and New York City. The court, by Mr. Justice Hughes, held that the statute did not infringe the constitutional prerogative of the Congress of the United States to regulate interstate commerce.

From a time antedating the Revolution, States have exercised the power of regulating ferries and no exception has been made in the case of interstate ferries. When the power came to be contested

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[24] *Habeas Corpus* proceedings.

[25] P. 441 of the principal case.

[26] Act of 1909, §§87-90, "Acts & Resolves of Mass.," p. 707.

[1] Miller v. St. Clair County, 7 Ill. 197 (1845); Marshall v. Grimes, 41 Miss. 27 (1866); Carrol v. Campbell, 108 Mo. 550 (1891).

[2] 34 Supreme Court Rep. 821 (1914).